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A CURIOSITY IN ECCLESIASTICAL JUDICATION.

At the General Convention of the Episcopal Church in 1835 the report of the committee on the state of the church declared that the condition of the diocese of Kentucky was "such as to call for a special tribute of devout acknowledgment to the Giver of all spiritual grace and of every good and perfect gift." At the next General Convention in 1838 the corresponding committee reported in regard to Kentucky that "the troubles which have disturbed the tranquility of this diocese for several years past have happily subsided." Between these two dates there had occurred an ecclesiastical trial, sufficiently peculiar in other particulars, but worthy of a place among the curiosities of legal practice for the extraordinary finding of the court which heard the case and the extraordinary penalty which it imposed. The purpose of this paper is not to enter at all into the merits of the case and barely to touch upon its place in history; but only to draw from forgotten records a suggestion of difficulties surmounted and questions of casuistry solved in a way which may perhaps be called practical for the very good reason that it is not in accordance with any theory.

At that time the Episcopal Church in the United States had no general canon as to the manner of trial of a bishop. It was left to each diocese to institute the mode of trying any of its clergy, the bishop included; only it was provided that at every trial of a bishop, there should be one or more of the Episcopal order present, and that none but a bishop should pronounce sentence on any clergyman. In Kentucky, there was no other provision than that no presentment; and it seems to have been provided in some way that action should be made against the bishop except by order of the convention upon such presentment should be in accordance with the canons of Pennsylvania. The bishop of Kentucky was Dr. Benjamin Bosworth Smith, elected and consecrated in 1832 at the age of thirty-eight, who lived to be ninety years old and was for the last sixteen years of his life, by reason of seniority, presiding bishop. At the diocesan convention in 1836 there was serious trouble as to the names of those who had a right to seats, the bishop carrying on business in a body from which he had excluded some who claimed that they were legally members. This convention, enlarged by the seat-

ing of a few additional clergymen, among whom was the Rev. Dr. Thomas Winthrop Coit, Yale 1821, then president of Transylvania University at Lexington, sat for a while with closed doors in committee of the whole. The committee brought in a report that it had rejected a resolution "that the rumors and information which it had heard and considered were sufficient ground for a presentment of the bishop." The report was re-committed to the committee of the whole with directions to bring in an affirmative report. Instead of doing this, the committee reported again that it did not find any good and sufficient ground for the presentment of the bishop; and the convention laid the report on the table, but presently by a vote of seven to six voted to concur in it.

In the following year, 1837, the convention sat for thirteen days. The bishop objected to the seating of four out of the six clerical members whose names were on the rolls, but they were admitted. The matter of a presentment of the bishop was taken up, and he himself asked that, without any previous examination, the convention would go into the business of arranging charges and specifications. This was agreed to; and a committee with Dr. Coit at the head was appointed to take the matter in hand. The charges and specifications which they reported were adopted by a vote of fifteen to four; and with the consent of the bishop, it was agreed that they be presented to Bishop McIlvaine of Ohio, Bishop Otey of Tennessee, and Bishop Kemper of Missouri and Indiana. At a later date, Bishop McCoskry of Michigan was substituted for Bishop Otey.

The indictment was indeed formidable, at least in its length. Under Charge I, "With originating and keeping up the present disturbed state of the diocese," there were forty-one specifications; under Charge II, "With mental reservation, equivocation, insincerity, duplicity, and making statements partial, contradictory, and untrue," there were forty-two, of which twelve were repetitions of those brought earlier; under Charge III, "With defaming and persecuting the clergy and official laymen of the diocese," there were eighteen, of which but four were new, and one was withdrawn; under Charge IV, "Illegal and arbitrary conduct in office, and improper use of official influence," there were eighteen, only one being new; under Charge V, "Arrogating unreasonable privileges, and making unbecoming demands on the grounds of the Episcopal office," there were twelve, all but one being new; and under Charge VI, "In conducting the monied and other business operations of the diocese in a loose and improper manner, and disregarding obligations in money matters," there were three new specifications. The

whole number of specifications was therefore 104, reduced by deduction of repetitions to 90.

The case was soon heard and the court published its verdict. It was required under the canon to declare the accused to be guilty or not guilty of each charge and specification; a requirement in some cases like that given in the books on logic that a plain answer, yes or no, be given to the question, "Have you left off beating your grandmother?" In conforming to this requirement they found it necessary to bring in what seems a new definition of "guilty" and to frame an entirely new form of verdict. A few instances may be given, worthy of examination by some new "Provincial Letters."

Charge I, Specification 4.—"He told Mrs. Smedes that he had called her son, the Rev. A. Smedes, as his assistant in Christ Church, Lexington, with a salary of \$1,000 a year, when he had not done so; in consequence of which she reserved room for him and refused a number of boarders, and suffered great disappointment and loss." Finding: "Guilty—without the least criminality."

Specification 5: "The bishop having told several persons that he had called the Rev. A. J. Smedes to be his assistant, one of the wardens went to inquire about it, and the bishop told him he had done no such thing." Finding: "Guilty—without the least criminality."

This finding of "Guilty without criminality" occurs about twenty times and that of "Guilty" with other modifications over fifty times. But to proceed:

Specification 17 of Charge I is to the effect that the bishop had told some of the clergy "that if they differed from him in opinion, it was very indelicate to continue in office;" as to which it was decided that he was "Not guilty—but unwise."

In Specification 29, it was charged that he had declared of certain persons "that they were schismatics, and deserved no aid and would receive none with his consent—or words to that amount;" and the finding takes this form: "Guilty in this—the facts alleged are true, but of no importance."

The decision on Specification 13 of Charge II shows a sympathy with a hard-pressed conscience: "When a fair was spoken of in Lexington, the bishop, in conversation with John E. Cooke on the subject, agreed that they were abominable evils and destructive of the influence of religion over the minds of all, and especially of the young; while on the other hand, he spoke favorably of them to the ladies who were anxious to have one, and advised them to go on." "Guilty of inconsistency, reconcilable however with honesty."

The next specification is too long to quote, but the conclusion is

edifying: "Guilty in this: That the facts alleged are true, and the court cannot reconcile them with propriety or justice." On Specification 15 of Charge III, we have the conclusion that the bishop was "Guilty of an authorized insinuation against Dr. Cooke."

On Charge IV, Specification 1: "In declaring to a trustee, that let the trustees of the seminary make what laws they might, the seminary must go on, and should go on," it was decided that the accused was "Guilty without criminality—Specification of no importance."

Under the head of Charge V, Specification 1 having been dismissed with the words: "Not guilty, but unwise," the second reads thus: "The bishop complained of it as an outrageous and atrocious insult, that the standing committee shall think of advising him to resign, although a majority of that body believed he ought to resign;" and the finding is: "Guilty of the complaint as charged, but the court cannot impute blame." The third is rather more remarkable: "By saying that for a standing committee to advise a bishop to resign was as preposterous as for a cabinet to advise a king to abdicate;" "Guilty of the words charged, without blame."

Finally, in the last specification the bishop was charged with "using \$789 of the money collected for the seminary in New York for his private purposes . . . and declaring that he . . . should never think it wrong to use any money in his hands, belonging to the church, for his necessary expenses;" and the court found that he was "Guilty in this: That the facts alleged are true, but the accused under the circumstances free from blame."

The plain verdict of "Guilty" was rendered on five specifications, and that of "Not guilty" on twenty-three; the others were diversely qualified. In the summing up of each charge the accused was acquitted of guilt; but the three bishops who heard the case did find that he had "mistaken views of duty and expediency;" that he had "sometimes used language in a manner so careless and indiscreet as naturally to expose him to a suspicion of insincerity;" that he had taken and used "a belligerent attitude and deportment which, though honestly believed by him to be warranted and necessary, was uncalled for;" that "in some cases his acts, though believed by him to be right, were not sufficiently conciliatory."

Therefore, though declaring the accused not guilty of the charges preferred, the court evidently thought that he deserved some discipline, and then proceeded to affirm that it would not be necessary to execute it. Having first declared that the peculiar circumstances were such as "to call for, from both parties towards each other, and from the community in general, much kind, charitable,

and extenuating consideration," and that they hoped that "for the peace of the church and the spiritual good of all concerned, the parties to this issue and their friends respectively would scrupulously avoid whatever may tend in any way to renew the controversy," they gave their final decision in these words:

"In conclusion, the court considers that in the publication of so much of their sentence as contains an opinion of guilt and expression of the censure of the court, the accused has received the merited admonition and penalty, and are now therefore prepared to reinvest him with his robes of office, and receive the Right Rev. Benjamin B. Smith, as bishop of the Diocese of Kentucky, within the rails of the altar and reinstate him in their affectionate confidence."

So ended this extraordinary trial. It would not have been brought forth from the obscurity of almost unknown—and when not unknown, ignored—records, had it not been considered that after all these years it would be looked upon only as a curiosity, perhaps unique in the way alike of charge, of finding, and of sentence. To some it may suggest a study in psychology or in ethics; the present writer is not prepared to enter upon the one or the other.

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